

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN ROBERT DEMOS,

Plaintiff,

v.

WASHINGTON STATE ATTORNEY  
GENERAL, *et al.*,

Defendants.

CASE NO. C19-0059-JCC

ORDER

This matter comes before the Court on Plaintiff John Robert Demos' objections (Dkt. No. 4) to the report and recommendation (Dkt. No. 3) issued by the Honorable Michelle L. Peterson, United States Magistrate Judge. Having reviewed Judge Peterson's report and recommendation, Plaintiff's objections, and the relevant record, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** the report and recommendation for the reasons set forth herein.

Plaintiff is currently incarcerated at the Washington State Penitentiary in Walla Walla, Washington. (Dkt. No. 1.) Plaintiff, acting *pro se*, filed a 42 U.S.C. § 1983 claim against the Washington State Attorney General and other state officials. (*See* Dkt. No. 1.) Plaintiff alleges that 28 U.S.C. § 1915(g) is unconstitutional. (*Id.* at 1.) Accordingly, Plaintiff argues that he should be allowed to proceed *in forma pauperis* without having to allege that he is in imminent danger of serious physical injury. (*Id.*)

1 Judge Peterson recommends the complaint be dismissed without prejudice for failure to  
2 state a claim. (Dkt. No. 3 at 2.) Judge Peterson notes that Plaintiff is a bar order litigant and his  
3 “proposed complaint does not include any allegation even implicating § 1915(g)’s imminent  
4 danger standard.” (*Id.*) (citing 28 U.S.C. § 1915(g)). Plaintiff objects to Judge Peterson’s report  
5 and recommendation. (Dkt. No. 4.)

6 A district court reviews objections to a magistrate judge’s report and recommendation *de*  
7 *novo*. Fed. R. Civ. P. 72(b)(3). The district court may accept, reject, or modify the recommended  
8 disposition; receive further evidence; or return the matter to the magistrate judge with  
9 instructions. *Id.* Pursuant to the Prisoner Litigation Reform Act:

10 In no event shall a prisoner bring a civil action or appeal a judgment in a civil action  
11 or proceeding under this section if the prisoner has, on 3 or more prior occasions,  
12 while incarcerated or detained in any facility, brought an action or appeal in a court  
13 of the United States that was dismissed on the grounds that it is frivolous, malicious,  
or fails to state a claim upon which relief may be granted, unless the prisoner is  
under imminent danger of serious physical injury.

14 28 U.S.C. § 1915(g). Plaintiff is subject to a bar order in this Court because he has had more than  
15 three actions dismissed as frivolous, malicious, or for failure to state a claim. *See In re John*  
16 *Robert Demos*, MC91-0269-CRD, Dkt. No. 1 (W.D. Wash. 1992).

17 Plaintiff’s complaint does not plausibly allege that he is in imminent danger of serious  
18 physical injury. (Dkt. No. 1 at 1.) Indeed, Plaintiff does not even try to argue that he is in  
19 imminent danger of serious physical injury, but instead argues that the statute is unconstitutional.  
20 (*Id.*) Plaintiff’s objections to Judge Peterson’s report and recommendation fail to address the  
21 complaint’s shortcomings and his constitutional claim is frivolous. (*See* Dkt. No. 4.)

22 For the reasons explained herein, the Court ORDERS as follows:

- 23 1. The report and recommendation (Dkt. No. 3) is ADOPTED;  
24 2. Plaintiff’s application to proceed *in forma pauperis* (Dkt. No. 1) is DENIED;

1           3.       This matter is DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(g)  
2 and standing bar orders, *see In re John Robert Demos*, MC91-269-CRD, Dkt. No. 1 (W.D.  
3 Wash. 1992); and

4           4.       The Clerk shall send a copy of this order to Plaintiff and to Judge Peterson.

5       DATED this 13th day of August 2019.

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9       John C. Coughenour  
10       UNITED STATES DISTRICT JUDGE  
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